



Enforcement Division

# Advisory

To: Sellers of In-Use Off-Road  
Diesel Vehicles in California

Number 378

December 2008

## UPDATED DISCLOSURE/RECORD RETENTION REQUIREMENTS FOR DEALERS AND SELLERS OF IN-USE OFF-ROAD DIESEL VEHICLES EFFECTIVE 9/15/08

The Air Resources Board (ARB) has adopted a regulation for In-Use Off-Road Diesel Vehicles, which became effective under California law on June 15, 2008. This regulation is designed to reduce harmful emissions from diesel powered construction and mining vehicles operating in California. Fleet owners are subject to retrofit or accelerated replacement/repower requirements for which ARB must obtain authorization prior to enforcement from the United States Environmental Protection Agency under the federal Clean Air Act. In addition, this regulation also imposes notification and record keeping requirements on individuals and businesses who sell off-road diesel vehicles, which the ARB is authorized to enforce.

The disclosure requirements became effective as of June 15, 2008. ARB enforcement began conducting field audits beginning in mid-September 2008.

The regulation requires sellers in California of applicable off-road vehicles (self-propelled diesel-fueled vehicles 25 horsepower and up that were not designed to be driven on-road) to notify the buyer that the off-road diesel vehicle may be subject to retrofit or accelerated replacement/repower requirements. In addition, the seller must keep records of the disclosure notice for three years. The disclosure must be printed on the bill of sale or invoice. ARB encourages sellers to provide the disclosure **prior** to the sale so that the buyer can be aware of the regulation when making a buying decision.

If you have sold equipment on or after June 15, 2008 and did not include the disclosure, please contact all buyers and provide them with the disclosure. ARB enforcement may be inclined to reduce fines if you did not know about the disclosure requirements and made a good faith effort to inform buyers.<sup>1</sup>

These requirements are specified in title 13, California Code of Regulations as follows:

### **§2449(j) Disclosure of Regulation Applicability:**

*Any person selling a vehicle with an engine subject to this regulation in California must provide the following disclosure in writing to the buyer on the bill of sale, "When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-Road Diesel*

<sup>1</sup> For sales that occurred before September 15, 2008 and that did not include the disclosure on the invoice or bill of sale, ARB staff will not pursue enforcement action as long as the disclosure to the buyer was provided in writing before September 15, 2008.

*Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>.*<sup>2</sup>

#### **§2449(h)(8) Record Retention:**

*Each fleet owner shall maintain the records for each vehicle subject to the regulation until it is retired and of the overall fleet as long as the owner has a fleet or March 1, 2030, whichever is earlier. If vehicle ownership is transferred, the seller shall convey the vehicle records including vehicle data per section 2449(g)(1)(B), engine data per section 2449(g)(1)(C), and VDECS data per section 2449(g)(1)(D) to the buyer. If fleet ownership is transferred, the seller shall convey the fleet records including fleet data per sections 2449(g)(1)(A) through (G) to the buyer. Dealers must maintain records of the disclosure of regulation applicability required by Section 2449(j) for three years after the sale.*

#### **§2449(i) Right of Entry**

*For the purpose of inspecting off-road vehicles and their records to determine compliance with these regulations, an agent or employee of ARB, upon presentation of proper credentials, has the right to enter any facility (with any necessary safety clearances) where off-road vehicles are located or off-road vehicle records are kept.*

**Non-Compliance:** Health and Safety Code, Section 39674 (a) authorizes civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Health and Safety Code, Section 39674 (b) authorizes civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

As a matter of policy, each first time violation of the disclosure/record retention requirements will be assessed a minimum civil penalty of \$500. Subsequent penalties can be up to \$1,000 to \$10,000. Daily fines will be assessed individually for every vehicle in violation. The standard for assessing penalties is one of strict liability. The seller will be responsible for the penalty.

For further information about the In-Use Off-Road Diesel Vehicle regulation, please visit our website at: <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>. Fact sheets are available at <http://www.arb.ca.gov/msprog/ordiesel/factsheets.htm>, and the full text of the regulation is available at <http://www.arb.ca.gov/regact/2007/ordiesel07/frooal.pdf>

For questions regarding enforcement of the In-Use Off-Road Vehicle regulation, please contact Mr. Tajinder Gill at (626) 459-4304 or [tgill@arb.ca.gov](mailto:tgill@arb.ca.gov).

If you have questions about the regulation or our outreach efforts, please contact Ms. Elizabeth White (916-324-1704 or [eiwhite@arb.ca.gov](mailto:eiwhite@arb.ca.gov)), or Ms. Kim Heroy Rogalski (916-327-2200 or [kheroyro@arb.ca.gov](mailto:kheroyro@arb.ca.gov)).

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<sup>2</sup> On May 1, 2008, the California Air Resources Board (ARB) mailed potential sellers of off-road vehicles a letter that identified disclosure language that must be provided in the bill of sale. Unfortunately, the last sentence of the disclosure language providing the website was omitted. The disclosure needs to contain all three sentences listed above.

